

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE

IN THE MATTER OF:)
)
Local Government Center, Inc., et al.) C-2011000036
)
RESPONDENTS)
)

**HEALTHTRUST’S REPLY TO THE BUREAU OF SECURITIES REGULATION’S
OBJECTION TO HEALTHTRUST’S MOTION FOR RECONSIDERATION
OF THE FINAL ORDER ADDRESSING REMAND**

On page 7 of the Bureau of Securities Regulation’s (BSR) objection to HealthTrust’s Motion for Reconsideration of the Final Order Addressing Remand, the BSR incorrectly argues that “HealthTrust did not follow its Bylaws when it distributed the \$17.1 million in September 2014.” The BSR’s argument is based on a false statement of fact: “HealthTrust’s Bylaws limit distributions to current members who were also members on the last day of the year *in which the surplus was generated.*”

The BSR is wrong about the qualifications to participate in the distribution of surplus under HealthTrust’s Bylaws. The HealthTrust Bylaws contain two qualifications for participation in a return of surplus:

1. the member is in good standing and participating in HealthTrust on the date of adoption of the Board of Directors’ resolution that declares such surplus; and
2. the member has been in good standing and participating in HealthTrust continuously and without interruption or absence from the last day of the end of the year for which the surplus is declared through the date of the distribution set forth in the Board of Directors’ resolution declaring such surplus.¹

Being a member on the last day of the year in which the surplus was generated is not a qualification for eligibility to participate in a distribution of surplus under HealthTrust’s Bylaws.

¹ Exhibit 1 – HealthTrust, Inc. Bylaws effective September 1, 2013, p. 9, Article V, Section 5.1, which were in effect when the distribution was made in September 2014.

Instead, the HealthTrust Bylaws provide that an entity must be a member on the last day of the year for which the HealthTrust Board of Directors declares the surplus.

HealthTrust followed its Bylaws when it distributed the \$17.1 million in September 2014. HealthTrust received the \$17.1 million payment from PLT in 2014, and the HealthTrust Board of Directors declared the surplus in June 2014² for the year in which the receipt of the repayment created a surplus, fiscal year 2014.³ The funds were distributed in September 2014 “to HealthTrust’s Medical and Dental Members proportionally to contribution received during Fiscal Year 2014 (September 1, 2013-June 30, 2014) as provided for in the HealthTrust, Inc. Bylaws.”⁴ Rather than disproving that HealthTrust failed to comply with its Bylaws when it distributed the \$17.1 million, the BSR’s example of Strafford County receiving funds from the distribution demonstrates HealthTrust’s compliance with its Bylaws.⁵

The BSR’s argument about an alleged insufficiency of HealthTrust’s notice to the BSR of the manner in which the \$17.1 million was to be distributed is based on the false premise that the HealthTrust Bylaws conditioned participation in a distribution of surplus on being a member on the last day of the year that surplus was generated.⁶ As detailed in HealthTrust’s Motion for Reconsideration of the Final Order Addressing Remand, HealthTrust notified the BSR of the

² Statement of Stipulated Facts, ¶3.

³ The HealthTrust Board acted consistent with the August 16, 2012 Final Order (Order). The Order did not require HealthTrust to return all of the repaid \$17.1 million as surplus. Neither did the Order require HealthTrust to determine the amount of the funds to be declared, and returned as, surplus based on the year the amounts were originally transferred from HealthTrust to PLT. Rather, the Order required that “Funds received by the Local Government Center Health Trust in re-payment of the subsidy, to the extent they constitute amounts in excess of the earnings and surplus of the Local Government Center Health Trust risk pool management program . . . shall be returned to members consistent with RSA 5-B:5, I (c).” Order, p. 79.

⁴ Statement of Stipulated Facts, ¶3.

⁵ The BSR correctly states that HealthTrust distributed the entire \$17.1 million to current 2014 members and their participation during 2003 to 2010 was not determinative. Strafford County was a HealthTrust member in 2014.

⁶ BSR’s objection, p. 8.

manner in which it intended to distribute the \$17.1 million, which was consistent with the HealthTrust Bylaws, and distributed the funds consistent with its notice and its Bylaws.⁷

In addition to being contrary to the evidence, the BSR's argument that HealthTrust did not comply with its Bylaws when it distributed the \$17.1 million is antithetical to its position stated in previous pleadings. In Bureau of Securities' Hearing Memorandum of Law, the BSR argued against HealthTrust's position, in part, because HealthTrust had complied with its Bylaws:

On or about September 8, 2014, HealthTrust, solely at its own risk, distributed the \$17.1 million . . . as provided for by HealthTrust's by-laws. See Statement of Stipulated Facts, ¶¶2-3 and Exhibit A.⁸

The BSR also requested that the Hearing Officer include HealthTrust's compliance with its Bylaws as part of its proposed order:

In 2014, at its own risk during the pendency of the Intervenor's appeal of the Omnibus Order, HealthTrust distributed the \$17.1 million . . . as provided for by HealthTrust's by-laws. See Statement of Stipulated Facts, ¶¶2-3 and Exhibit A.⁹

The BSR's argument about insufficient notice, like the Hearing Officer's finding of lack of notice, is contrary to the evidence. It cannot provide a basis to refute HealthTrust's argument that the Final Order Addressing Remand is unjust and unreasonable.

Respectfully submitted,
HEALTHTRUST, INC.
By Its Attorneys,

Dated: November 16, 2016

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⁷ HealthTrust's Motion for Reconsideration of the Final Order Addressing Remand, pp. 3-6.

⁸ Bureau of Securities' Hearing Memorandum of Law, p. 5 (underlining in original).

⁹ Bureau of Securities' Proposed Order, p. 1.

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CERTIFICATE OF SERVICE

I certify that I have forwarded copies of this pleading to counsel of record via email.

/s/ Michael D. Ramsdell
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